

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE UNIVERSITY OF WASHINGTON, a)	
Washington state agency; THE CENTER FOR)	No. [
HUMAN RIGHTS AT THE UNIVERSITY OF)	
WASHINGTON, a research center created by)	COMPLAINT FOR
state law; and MINA MANUCHEHRI, a fellow)	DECLARATORY RELIEF FOR
at the Center;)	VIOLATING FOIA
)	
Plaintiffs,)	
)	
v.)	
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.		

Plaintiffs, the University of Washington, the Center for Human Rights at the University of Washington, and Mina Manuchehri (collectively “the UWCHR”), allege as follows:

INTRODUCTION

1. The UWCHR brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended to enjoin the Central Intelligence Agency (“CIA”) from continuing to improperly withhold agency records regarding the activities of retired Salvadoran Colonel Sigifredo Ochoa Pérez. There is ample evidence that Salvadoran troops under Col. Ochoa’s command carried out numerous massacres against civilians. These massacres include the massacre of El Calabozo on August 22, 1982, and the Santa Cruz Massacre of November 14, 1981, in which troops slaughtered dozens of civilians.

2. Col. Ochoa served as the Commander of military detachment number two in Cabañas, El Salvador, between August 31, 1981 and January 6, 1983. Col. Ochoa adhered closely to the United States' suggested wartime strategy. On November 11, 1981, approximately 1,200 Salvadoran troops entered the department of Cabañas and over the following days, carried out operations that resulted in the deaths of hundreds of civilians. The massacre of Santa Cruz occurred on November 14, 1981, in Santa Cruz, Victoria, Cabañas, and resulted in the deaths of an unknown number of civilians, estimated in the hundreds. This massacre was part of a series of military operations in Cabañas, Chalatenango, Usulután, and Morazán, which extended from September through December 1981.

3. Following further training at the Inter-American Defense College in Washington, D.C., Col. Ochoa served as the Commander in Chalatenango, El Salvador, between August 1984 and February 1986. Col. Ochoa and the Salvadoran military executed a United States-advised "low-intensity conflict" counterinsurgency strategy. This strategy included creating incentives for civilians to either flee guerrilla-controlled zones entirely or, if remaining, collaborate with the military. Col. Ochoa and military officials deemed guerrilla pervasive areas as "free fire zones" over which the military could conduct surveillance and bombing, even if individuals residing in these areas were not guerrillas. He also allegedly blocked humanitarian assistance from the Red Cross and Catholic relief agencies from reaching the region.

4. Today, Col. Ochoa is the subject of open criminal investigations in the cases of the massacres at Santa Cruz and El Calabozo. He is also implicated in the July 1981 massacre at San Francisco Angulo, in which the Constitutional chamber of the Salvadoran Supreme Court ordered in 2014 that state prosecutors undertake a full investigation, as well as in several cases of forced disappearance of children in which the Inter-American Court for Human Rights has ordered the Salvadoran state to conduct investigations in recent years. Access to the

1 documents requested by the UWCHR could facilitate justice proceedings in these and other
2 cases of grave rights abuses.

3 5. The United States provided approximately \$5 billion in aid to El Salvador
4 during its Civil War and advised the Salvadoran military on counterinsurgency tactics. The
5 public has the right to investigate and obtain information regarding whether that aid was
6 directed toward any of these condemnable acts. Dr. Rowan Williams, the former Archbishop
7 of Canterbury, who currently chairs a working group of the UK Equality and Human Rights
8 Commission, has observed that the U.S. Government has a “particularly strong moral
9 obligation to make available any records which will assist in bringing to justice those who it
10 previously aided or protected.” See Exhibit A attached. Furthermore, several U.S. citizens
11 were present during the Cabañas massacres, including Philippe Bourgois, who survived the
12 massacre of Santa Cruz, have a right to documents containing information related to the
13 violence they suffered.

14 6. The UWCHR is informed and believes that the CIA possesses responsive
15 records. Numerous CIA records discussing Col. Ochoa are publicly available in the Library of
16 Congress. One excised CIA memorandum details the work Col. Ochoa did, “delivering
17 messages from Guatemalan coup plotters” and “engag[ing] in activities to silence the
18 Salvadoran left.” This memorandum is attached as Exhibit B.

19 7. A February 1989 Special National Intelligence Estimate entitled “El Salvador:
20 Government and Insurgent Prospects” was published under the letterhead of the Director of
21 Central Intelligence and discussed the potential consequences of an Ochoa-led government.
22 This document is attached as Exhibit C.

23 8. Several other publicly available memoranda reference Col. Ochoa in reports
24 regarding the kidnapping of Ines Guadalupe Duarte, the daughter of President Jose Napoleon
25 Duarte, in October 1985. These memoranda are attached as Exhibit D.
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15. Plaintiff, the Center for Human Rights at University of Washington, is an organization within the University of Washington. The Washington Legislature created the Center for Human Rights in 2009 to expand opportunities for Washington residents to receive a world-class education in human rights, generate research data and expert knowledge to enhance public and private policymaking, and to be an academic center for human rights teaching and research. The Center for Human Rights focuses on, among other things, the rights of all persons to security against violence. Its offices are in Seattle, Washington.

16. Plaintiff, Mina Manuchehri, is a fellow of the Center for Human Rights and a third-year law student at the University of Washington. Ms. Manuchehri resides in Seattle, Washington.

17. Defendant Central Intelligence Agency is a federal agency within the meaning of 5 U.S.C. § 552(4) and 5 U.S.C. § 552a(a)(1).

FACTS

UWCHR'S FOIA REQUESTS TO THE CIA

18. On December 15, 2013, Ms. Manuchehri made, on behalf of the UWCHR, a written FOIA request to Michele Meeks, the Central Intelligence Agency's Information and Privacy Coordinator. The request sought:

All documents from 1976 to the present regarding Salvadoran Colonel Sigifredo Ochoa Pérez. The areas of greatest interest are: 1) his service as Commander of military detachment #2 in Cabañas, El Salvador between February/March 1981 to March 9, 1983; and 2) his service as Commander in Chalatenango, El Salvador from August 1984 to February 1986. During both of these periods, there is ample evidence of massacres against civilians carried out by troops under his command.

The request provided additional details regarding the pertinent time periods and attached U.S. declassified documents, "including biographical information and timelines of Ochoa's military career." Attached as Exhibit G is a true and correct copy of the UWCHR's FOIA's request.

19. On December 30, 2013, Ms. Meeks responded that the CIA "can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the

1 existence or nonexistence of requested records is currently and properly classified and is
 2 intelligence sources and methods information that is protected from disclosure by section 6 of
 3 the CIA Act of 1949, as amended, and section 102A(i)(1) of the National Security Act of 1947,
 4 as amended.” Attached as Exhibit H is a true and correct copy of the CIA’s response.

5 20. On February 4, 2014, the UWCHR filed an administrative appeal of the CIA’s
 6 December 30, 2013 denial of the UWCHR’s FOIA request. Attached as Exhibit I is a true and
 7 correct copy of the UWCHR’s administrative appeal.

8 21. On March 5, 2014, Ms. Meeks notified the UWCHR that its appeal had been
 9 accepted and would be considered by the Agency Release Panel (“ARP”). Attached as Exhibit
 10 J is a true and correct copy of that notification.

11 22. On May 6, 2014, Ms. Meeks, as the Executive Secretary of the ARP, responded
 12 that the ARP had determined “that in accordance with Section 3.6(a) of Executive Order 13526,
 13 the CIA can neither confirm nor deny the existence or nonexistence of records responsive to
 14 your request.” Attached as Exhibit K is the ARP’s response.

15 23. On April 17, 2014, Ms. Manuchehri made, on behalf of the UWCHR, a written
 16 FOIA request to Michele Meeks, the Central Intelligence Agency’s Information and Privacy
 17 Coordinator. The request sought: “All documents from 1980 to the present regarding United
 18 States citizen, Philippe Bourgois.” In the 1980s, as a doctoral student at Stanford, Mr.
 19 Bourgois traveled to Honduras to do field research in a refugee camp. In November of 1981,
 20 Mr. Bourgois crossed the border and traveled to the department of Cabanas, El Salvador to
 21 continue his field research. While there, he was caught in a Salvadoran military operation in
 22 which he and 1,000 villagers were surrounded by Salvadoran military troops and subjected to
 23 heavy machine gun firing and bombing. In this context, he survived the November 14, 1981
 24 massacre of Santa Cruz. Attached as Exhibit L is a true and correct copy of the UWCHR’s
 25 FOIA’s request.

1 24. On August 21, 2014, the CIA requested additional information regarding
2 UWCHR's request for information regarding Mr. Bourgois. Attached as Exhibit M is a true
3 and correct copy of the CIA's request. On September 30, Ms. Manuchehri provided the
4 requested information to the CIA. Attached as Exhibit N is a true and correct copy of this
5 correspondence.

6 25. On October 15, 2014, Meeks responded that the CIA "can neither confirm nor
7 deny the existence or nonexistence of records responsive to your request. The fact of the
8 existence or nonexistence of requested records is currently and properly classified and is
9 intelligence sources and methods information that is protected from disclosure by section 6 of
10 the CIA Act of 1949, as amended, and section 6 of the CIA Act of 1949, as amended, and
11 section 102A(i)(1) of the National Security Act of 1947, as amended. Therefore your request is
12 denied pursuant to FOIA exemptions (b)(1) and (b)(3)." Attached as Exhibit O is a true and
13 correct copy of the CIA's response.

14 26. On November 30, 2014, the UWCHR filed an administrative appeal of the
15 CIA's October 15, 2014 denial of the UWCHR's FOIA request. Attached as Exhibit P is a true
16 and correct copy of the UWCHR's administrative appeal.

17 27. On December 30, 2014, Mr. Giuffrida notified the UWCHR that its appeal had
18 been accepted to be considered by the ARP. Attached as Exhibit Q is a true and correct copy of
19 that notification.

20 28. On March 25, 2015, Michael Lavergne, as the Executive Secretary of the ARP,
21 responded that the ARP had determined "that in accordance with Section 3.6(a) of Executive
22 Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records
23 responsive to your request." Attached as Exhibit R is the ARP's response.

24 29. On September 15, 2014, Ms. Manuchehri once again made, on behalf of the
25 UWCHR, a written FOIA request to Michele Meeks, the Central Intelligence Agency's
26 Information and Privacy Coordinator. The request sought:
27

1 All documents from 1976 to the present regarding Salvadoran
 2 Colonel Sigifredo Ochoa Pérez. The areas of greatest interest
 3 are: 1) his service as Commander of military detachment #2 in
 4 Cabañas, El Salvador between February/March 1981 to March 9,
 5 1983; and 2) his service as Commander in Chalatenango, El
 6 Salvador from August 1984 to February 1986. During both of
 7 these periods, there is ample evidence of massacres against
 8 civilians carried out by troops under his command.

9 Once again, the request provided additional details regarding the pertinent time periods and
 10 attached U.S. declassified documents, “including biographical information and timelines of
 11 Ochoa’s military career.” Attached as Exhibit S is a true and correct copy of the UWCHR’s
 12 FOIA’s request.

13 30. On November 14, 2014, John Giuffrida, Acting Information and Privacy
 14 Coordinator for the CIA responded that “[w]e cannot accept your FOIA request for ‘all
 15 documents from 1976 to the present regarding Salvadoran Colonel Sigifredo Ochoa Perez’
 16 because it would require the Agency to perform an unreasonably burdensome search. You
 17 state in your request that there are two periods of time/two of his assignments in which you are
 18 most interested. May we narrow the scope of this request to these two time periods?” Attached
 19 as Exhibit T is Mr. Guiffrida’s response. Following her receipt of this letter, Ms. Manuchehri,
 20 on multiple occasions, attempted to reach Mr. Giuffrida by telephone but never reached him
 21 and never reached any agreement about narrowing this request.

22 31. The CIA has wrongfully withheld the records sought by the UWCHR. There is
 23 a substantial strong public interest in the disclosure of the documents requested. The CIA’s
 24 refusal to release these documents that are believed to be within its custody and control
 25 constitutes an abuse of the CIA’s discretion and a violation of FOIA.
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FIRST CAUSE OF ACTION

**Violation of FOIA by the CIA for Failure to Make Promptly Available
the Records Sought by the UWCHR's requests.**

32. UWCHR repeats and realleges the allegations contained in paragraphs 1 through 31 above, inclusive.

33. UWCHR has a legal right under FOIA to obtain the agency records it requested on December 15, 2013, April 17, 2014, and September 15, 2014, and there exists no legal basis for the CIA's failure to make these records available to the public.

34. The CIA's failure to make promptly available the record sought by UWCHR's requests violates FOIA, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(ii), and applicable regulations promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the Court award them the following relief:

A. Declare that the CIA has violated FOIA in its responses to the FOIA requests;

B. Order the CIA to immediately disclose the requested records to Plaintiffs and enter an injunction prohibiting the CIA from continuing to withhold the requested records from the public;

C. Award Plaintiffs their reasonable costs and attorneys' fees;

D. Grant such further relief as the court may deem just and proper.

DATED this 2nd day of October, 2015.

Davis Wright Tremaine LLP
Special Assistant Attorneys General

By /s/ Tom Wyrwich

Thomas R. Burke*
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Telephone: (415) 276-6552
Fax: (415) 276-6599
E-mail: thomasburke@dwt.com

Tom Wyrwich
WSBA #45719
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Telephone: (206) 757-8176
Fax: (206) 757-7176
E-mail: tomwyrwich@dwt.com

Attorneys for Plaintiffs the Center for
Human Rights at the University of
Washington, the University of Washington
and MINA MANUCHEHRI

**pro hac vice application forthcoming*